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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,852	08/21/2001	David Klug	88265-6971	7438
28765	7590	12/02/2003	EXAMINER	
WINSTON & STRAWN PATENT DEPARTMENT 1400 L STREET, N.W. WASHINGTON, DC 20005-3502			BHAT, MTNA NMN	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,852

Applicant(s)

KLUG ET AL.

Examiner

N. Bhat

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4 and 18 is/are allowed.
- 6) ☒ Claim(s) 1,5-17,19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 5-17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steels et al.

Steels et al. teach a process and center filled bars of confectionery material, which is made by making successive deposits of shell, and filling materials into adjoining cavities of molds moved in succession beneath coaxial depositing nozzles. The cavities in each mold are separated by webs over which shell material overflows so that successive deposits join together to form in each a mold having bar having a flat base. Steels et al. teach providing center filled bars having a flat base and a number of protuberances being separated from one another by thin webs of base material so that they can be snapped off from the bar for individual eating. The bars include a center filling of one material and the outer shell material is of another confectionery

material. The outer shell material can be a toffee, fudge, chocolate, fondant cream, jelly or butterscotch. The filling material can include materials such as chocolate, fudge, nougat, gelatin-based confections.[Note the abstract, Column 1, lines 5-44 and Column 2, lines 1-4]

However, Steels et al. does not teach providing a center filled confectionery having a polygonal shape as claimed.

It would have been obvious from reading Steels et al. to provide an edible confectionery product comprising a base unit formed of a first confectionery having a bottom wall and between five to twelve sides and defining a cavity therein with at least some of the sides forming an angle of less than 90° with respect to the bottom wall and a center inclusion formed of a second confectionery, the including located in the cavity and being at least partially imbedded therein wherein the first confectionery is different from the second confectionery because Steels teaches providing a center-filled bar which is substantially rectangular in shape which includes a base unit of a first confectioner and having a bottom wall which has 5 other sides (including top) which forming angles of less than 90° which further includes a center inclusion made of a second material. Admittedly, the shape of the candy is not polygonal. But, it would have been obvious to one having ordinary skill in the art the time was made to modify the mold design of Steel et al to include other polygonal shapes other than rectangular and provide a center-filled polygonal shaped confectionery as claimed by the process thus rendering applicant's claims as a whole obvious absent criticality in showing.

4. Claims 2-4 and 18 are free of the prior art as the dimensions as claimed have not been taught either singularly or in combination by the prior art.
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Knebl '791 teaches an apparatus and process for forming a center-filled confectionery rope having a viscous center. Knebl '905 teaches a method and apparatus for forming a center-filled confectionery rope having a soft center. Knebl et al. teach a chew confection having an outer casing comprising a chewing gum base and a sweetener and a center filling which is an aerated plastic blend. Barrett et al. teach a chew confectionery product. Akutagaw teaches a process for molding chocolate to make chocolate blocks having ornamental patterns and an internal hollow cavity. Cillario teach a confectionery product comprising a shell formed by two wafer shell halves jointly enclosing a filling. Vink et al. teach a two component soft candy. Crosello et al. teach a chewable, peelable nougat candy. Monte teaches a confectionery product which includes a soft candy center, which includes a plurality of coats, disposed over the center. Rosso teaches a food product with a filling and method of producing the food product.
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

A handwritten signature in black ink, appearing to read 'N. Bhat', with a stylized flourish extending from the end.

N. Bhat
Primary Examiner
Art Unit 1761